



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

**URGENT LEGAL MATTER
REQUIRES PROMPT RESPONSE**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

MAR 17 2015

David Glendon, President and CEO
Sprague Operating Resources, LLC
185 International Drive
Portsmouth, NH 03801

Re: Notice of Violation; Newington, New Hampshire

Dear Mr. Glendon:

The U.S. Environmental Protection Agency, Region 1 ("EPA") is issuing Sprague Operating Resources, LLC ("Sprague") the enclosed Notice of Violation ("NOV") for violations of the Clean Air Act.

The NOV addresses EPA's findings that Sprague has violated and is still in violation of requirements in the New Hampshire state implementation plan regarding stationary source construction and operation, including certain new source review provisions. The violations occurred at Sprague's facility located at 372 Shattuck Way in Newington, New Hampshire.

You may confer with EPA about the enclosed NOV and its findings. To schedule a conference, please contact Elizabeth Kudarauskas of my staff at (617) 918-1564 or have your legal counsel contact Thomas Olivier of my staff at (617) 918-1737 within fourteen (14) days of your receipt of this letter and the enclosed NOV.

Sincerely,

A handwritten signature in cursive script, reading "Susan Studlien", is positioned above the typed name.

Susan Studlien, Director
Office of Environmental Stewardship

Enclosure

cc: Pamela Monroe, NH DES
Dixon Pike, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1 – NEW ENGLAND

IN THE MATTER OF)

Sprague Operating Resources, LLC)
372 Shattuck Way)
Newington, NH)

Proceeding under Section)
113 of the Clean Air Act)

NOTICE OF VIOLATION

STATUTORY AUTHORITY

1. The United States Environmental Protection Agency, Region 1 (“EPA”) issues this Notice of Violation (“NOV”) to Sprague Operating Resources, LLC (“Sprague”) under the authority of Section 113(a)(1) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(a)(1), for violations of the Act at Sprague’s facility located on Shattuck Way in Newington, New Hampshire. The NOV describes EPA’s findings that Sprague violated the Act and the federally-enforceable New Hampshire state implementation plan (“SIP”) by: 1) installing and operating new equipment without complying with new source review (“NSR”) requirements of the SIP; and 2) failing to apply for and obtain a Title V operating permit the Act.
2. The New Hampshire SIP includes various federally-approved portions of Air Program Rules, entitled Env-A, which were promulgated by the New Hampshire Department of Environmental Services (“NHDES”), including requirements for NSR in nonattainment areas, as required by Sections 172(c)(5) and 173 of the Act, found in the SIP at Chapter Env-A 600 Statewide Permit System. These requirements are enforceable by EPA under Section 113 of the Act.

FACTUAL BACKGROUND

3. Sprague owns and operates a petroleum bulk terminal facility located at 372 Shattuck Way in Newington, New Hampshire ("the River Road Facility" or "the Facility"). The Facility stores and distributes #6 fuel oil, a process that emits VOCs.
4. On July 29, 2011 EPA inspectors performed an inspection at the River Road Facility.
5. On December 23, 2010, September 27, 2011, and March 29, 2012, EPA issued Clean Air Act Reporting Requirements to Sprague.
6. Sprague submitted timely responses to the Reporting Requirements.
7. On September 27, 2011, EPA issued a Clean Air Act Testing Order and Reporting Requirement to Sprague.
8. In response to the Testing Order and Reporting Requirement, Sprague submitted a Test Protocol that was conditionally approved by EPA on May 3, 2012.
9. Sprague conducted a VOC and HAP emissions test for #6 oil at its Searsport, Maine petroleum bulk terminal facility and submitted a test report on October 19, 2012. Sprague conducted a VOC and HAP emissions test for asphalt at its Searsport, Maine petroleum bulk terminal facility and submitted a final test report on July 31, 2013.
10. Based on results of the emissions tests on #6 oil and asphalt at the Searsport facility, prior to December 2009 the River Road Facility was a stationary source with the potential to emit less than 50 tons per year of VOCs.
11. Based on results of the emissions tests on #6 oil and asphalt at the Searsport facility, following the conversion of its asphalt storage tanks to #6 oil storage tanks at the River Road Facility in or around December 2009, the River Road Facility was a stationary source with the potential to emit over 50 tons per year of VOCs.

LEGAL FINDINGS AND NOTICE OF VIOLATIONS

12. Chapter Env-A 600, Part Env-A 610.01(a)(2)(b)¹, which applies to all new major stationary sources of criteria pollutants located in nonattainment areas or in the ozone transport region, defines a major stationary source as one which emits or has the potential to emit 50 tons per year or more of VOCs.
13. The owner or operator of a major stationary source of VOCs must apply for and obtain permits under Parts Env-A 602, 603, and 610 before the commencement of construction or installation of any new or modified device or the operation of any existing device.
14. NHDES's Title V operating permit program, at New Hampshire Air Program Rules Part Env-A 609, applies to any facility that has the potential to emit 50 tons per year or more of VOCs.
15. Section 503(c) of Title V of the CAA and EPA regulations at 40 C.F.R. § 70.5 require that a major stationary source submit a timely and complete Title V operating permit application within 12 months of commencing operation as a major source.
16. Under Section 502(a) of the CAA and EPA regulations at 40 C.F.R. § 70.7(b), no person shall operate a major stationary source after the date it was required to submit an application for a Title V operating permit, except in compliance with a permit issued under the state's operating program.
17. Forty C.F.R. § 70.2 defines "major source" to include major stationary sources located in designated ozone non-attainment areas or in the Ozone Transport Region.

Failure to Apply for and Obtain a Temporary Permit

18. The conversion of its asphalt storage tanks to #6 oil storage tanks at the River Road

¹ The federally-enforceable versions of the New Hampshire Air Program Rules contained in the SIP can be found on EPA's website at http://www.epa.gov/region1/topics/air/sips/sips_nh.html.

Facility in or around December 2009 constituted the construction of a new major stationary source of VOCs. See definition of “major stationary source” at 40 C.F.R. 51.165.

19. Sprague converted the tanks at the River Road Facility without first applying for and obtaining temporary permits under Env-A 602.01, 603.01, and 603.03.

20. As the owner and operator of a new major stationary source of VOCs with facility-wide potential emissions greater than or equal to 50 tons per year of VOCs, Sprague was required to obtain and operate in accordance with a temporary permit requiring the “lowest achievable emissions rate” (“LAER”) and VOC offsets under Env-A 610.04. To date, Sprague has not done so. Accordingly, Sprague has violated and continues to violate the SIP.

Failure to Apply for and Obtain an Operating Permit

21. Sprague operated and continues to operate the new major stationary source at the River Road Facility without first applying for and obtaining permits to operate under Env-A 602.02, 603.01, and 603.03.

22. As the owner and operator of a major stationary source of VOCs, Sprague was required to obtain and operate in accordance with a permit to operate requiring LAER and VOC offsets under Env-A 610.04. To date, Sprague has not done so. Accordingly, Sprague has violated and continues to violate the SIP.

Failure to Comply with Reasonably Available Control Technology Requirements

23. In December 2009, the River Road Facility became a miscellaneous stationary VOC source with combined theoretical potential VOC emissions (“TPE”) for all process and devices above 50 tons of VOCs per consecutive 12-month period. See Env-A 1222.01(a).

24. As the owner and operator of a miscellaneous stationary VOC source with a TPE above 50 tons per 12-month period, Sprague is required meet the “reasonably available control

technology (“RACT”)” requirements of Env-A 1222.02 at the River Road Facility. To date, Sprague has not done so. Accordingly, Sprague has violated and continues to violate the SIP.

Failure to Apply for and Obtain a Title V Operating Permit

25. The River Road Facility is and has been a “major source,” as defined by 40 C.F.R. § 70.2 since December 2009.

26. Sprague violated and continues to violate Sections 502(a) and 503(c) of the CAA and 40 C.F.R. §§ 70.5 and 70.7(b) by failing to make a timely application for a Title V operating permit within 12 months of commencing operation as a major source and by failing to operate in compliance with a Title V operating permit at the River Road Facility.

ENFORCEMENT

27. EPA may take any or all of the following actions: (a) issue an order requiring compliance with the Act; (b) issue an administrative penalty order; or (c) bring a civil action in federal district court for an injunction and/or monetary penalties up to \$37,500 per day for each violation. See Sections 113(a), (b) and (d) of the Act, 42 U.S.C. §§ 7413(a), (b) and (d), and 40 C.F.R. Part 19 as amended by 73 Fed. Reg. 75340-46 (Dec. 11, 2008) (Clean Air Act judicial and administrative penalties raised from up to \$25,000 to \$37,500 per day effective January 12, 2009). Be advised that Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), contains provisions that affect the burden of proof with respect to violations which continue or recur on or after the date of issuance of this NOV.

28. If Sprague has knowingly violated the requirements of the Act, Sprague and its responsible corporate officers may be subject to criminal penalties under Title 18 of the United States Code, imprisonment for not more than five years, or both. See Section 113(c) of the Act,

42 U.S.C. § 7413(c).

29. The issuance of this NOV does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law which are available to address these violations.

OPPORTUNITY TO CONFER

30. Sprague may confer with EPA concerning this NOV and the findings on which it is based. To schedule a conference, or to ask any questions, please contact Senior Enforcement Counsel Thomas T. Olivier at (617) 918-1737, or Environmental Engineer Elizabeth Kudarauskas at (617) 918-1564.

EFFECTIVE DATE AND APPLICABILITY

31. This NOV is effective as of the date signed below. The provisions of this NOV apply to Sprague, its officers, agents, servants, employees, successors, and assigns, and to all persons, firms, and corporations acting under, through, or for Sprague. The NOV is not subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

03/13/15
Date